TRIBAL GENERAL WELFARE EXCLUSION ACT OF 2014

Mr. WYDEN. Mr. President, I rise as chairman of the Senate Finance Committee to strongly support the Senate's passage of an important tax bill, H.R. 3043, the Tribal General Welfare Exclusion Act of 2014. This bill will improve the application of the Federal income tax in Indian Country and in doing so will reflect appropriate respect for the sovereignty of tribal governments.

By way of background, the Federal Tax Code treats most payments that individuals receive, and the value of some services they receive, as taxable income. There is an exclusion, though, for payments and services received under programs conducted by State and local governments. It's called the general welfare exclusion, and it covers things like housing assistance, emergency medical care, and education assistance. These are traditionally treated as nontaxable.

Unfortunately, the IRS has had difficulty applying the general welfare exclusion when it comes to benefits provided by tribal governments to tribal members. In order to determine which benefits were excluded from taxation, the IRS began conducting aggressive audits, leaving the tax treatment of many tribe-provided benefits in doubt. As Delores Pigsley, chairman of the Confederated Tribes of Siletz Indians Tribal Council, put it in a letter to me, ''for several years, the IRS has sought to tax tribal government programs and services.'' This, in turn, has undermined tribal sovereignty and hindered economic and social development.

I am pleased to report that there has been some significant progress. In July, the IRS issued regulations clarifying the application of the exclusion, and the regulations were a good step in the right direction, clearing up some questions and reflecting an improved dialogue between the IRS and tribes. However, a regulation is not a congressional statute; we need to lock these improvements into statutory law, as well as expand on them such as by establishing a Tribal Advisory Committee to help the Treasury Department and the IRS understand about how best to address tax issues affecting Indian Country.

The bill we are considering today would accomplish these goals. It codifies and expands IRS regulations, draws clear lines, and gives greater respect to tribal institutions and programs.

I would like to acknowledge the principal sponsors of the Senate version of the bill, Senators MORAN and HEITKAMP, for their leadership. I also would like to thank Senators STABENOW, THUNE, and other members of the Finance Committee, who have urged the committee to move forward on this issue.

Tribal governments have a long history of providing critical benefits to tribal members, and these programs are fundamental to the sovereignty and cultural integrity of tribes. Tribes, and not the IRS, are in the best position to determine the needs of their members and provide for the general welfare of their tribal citizens and communities. I know this bill has the support of tribes in my home State of Oregon and will benefit tribes and tribal members across the Nation. I urge all Senators to support the bill.

AMENDING THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Mr. HARKIN. Mr. President, as chairman of the Health, Education, Labor, and Pensions Committee, the pension community approached me with their concerns that the Pension Benefit Guaranty Corporation was interpreting section 4062(e) of the Employee Retirement Income Security Act of 1974 too broadly. That provision was intended to protect pension plan participants in the event of a cessation of operations at a facility. However, the pension community was able to provide substantial evidence that the corporation's enforcement efforts were out of line with congressional intent to such an extent that section 4062(e) had become a major impediment to businesses' efforts to restructure. After a thorough review of the situation and consultation with employers, employees, retirees, and the Obama administration, it became abundantly clear that enforcement efforts under section 4062(e) were failing to protect either pensions or the corporation.

Consequently, I worked with the ranking member, Senator ALEXANDER, on a new approach that we introduced as S. 2511. That legislation, which passed out of committee on a unanimous vote, will restore the original intent of section 4062(e) by clarifying the types of cessations of operations that trigger downsizing liability. The legislation will give plan sponsors certainty with respect to their obligations, and it will also ensures that participants are protected when workforce reductions signal that the ongoing viability of a plan sponsor is in question.

Overall, S. 2511 represents a significant compromise between the needs of employers, employees, and retirees, and I think it will give everyone a lot more clarity with regard to their obligations under section 4062(e). However, there are a few points about the bill that I would like to clarify.

First, there may be questions as to how the terms ''facility'' and ''location'' should be interpreted. They are not explicitly defined in S. 2511 because we intend for them to be interpreted according to their natural usage. For example, if an employer maintains several buildings that are physically adjacent to each other, that would be a single facility at a single location. However, if the employer maintains a building in one part of a city and another building in another part of the city, those buildings would be separate facilities at separate locations.

Second, S. 2511 is intended to allow employers to make conditional elections. The legislation allows employers that have a substantial cessation under section 4062(e) to elect a new, alternative means of satisfying their liability. The election must be made not later than 30 days after the earlier of the date that the employer notifies the corporation of a substantial cessation of operations or the date that the corporation makes a final administrative determination both that a substantial cessation of operations has occurred and of the amount of the alternative liability. Of course, there may be instances in which it is uncertain as to whether such a cessation has occurred or the amount of the alternative liability, if any, even after a final administrative determination has been made by the corporation. In those cases, the employer would certainly not be required to make a binding election to pay amounts that may later be determined not to be due. Thus, in all cases, an election by the employer would become inapplicable to the extent that a court subsequently rules or the corporation later agrees that a cessation has not occurred or that the alternative liability amount is lower than the amount determined by the corporation.

To the extent that an election becomes inapplicable, any contributions previously made by the employer to satisfy such inapplicable liability amount should be treated as additional funding contributions that are not subject to the provisions of the bill. Consequently, such additional funding contributions could be treated as increasing the employer's prefunding balance. In addition, we fully intend for the corporation and the courts to have the power to stay, in whole or in part, an employer's obligation to make alternative liability payments until the court has determined whether there has been a substantial cessation and/or the alternative liability amount.

In other cases, a substantial cessation may have occurred, but there is no liability of any kind due to the corporation's enforcement policy. We expect that some employers may want to make an election of the alternative liability amount in case the employer's financial condition changes and the corporation asserts a liability under section 4062(e). In such cases, the annual amount due under the alternative liability method would be zero until the corporation makes a final administrative determination that the corporation's enforcement policy no longer applies to such employer. To ensure that a substantial cessation in one year cannot cause liabilities 10 or 20 years later, for example, the 7-year payment period for the alternative liability amount would include years in which the amount due is zero.

In order to ensure that any reporting requirement that may later be determined to apply is satisfied, an employer may notify the corporation of

an event that the employer does not believe constitutes a substantial cessation of operations. If the employer informs the corporation in writing, the notification will not trigger the 30-day period for making an election, and the 30-day period will begin when the employer agrees that the event constitutes a substantial cessation of operations or when the corporation makes a final administrative determination to that effect and similarly determines the amount of the alternative liability.

Third, S. 2511 is intended to prevent employers from being subject to retroactive liability and to other unreasonable payment deadlines. The legislation generally requires the first contribution under the alternative liability method to be paid not later than the earlier of (1) the due date for the minimum required contribution for the year in which the substantial cessation occurred and (2) in the case of the first contribution, the date that is 1 year after the later of (a) the date that the employer notifies the corporation of the substantial cessation or (b) the date that the corporation makes a final administrative determination that a substantial cessation has occurred and of the amount of the alternative liability, with subsequent contributions due on the same date in the following years. The intent is to ensure that in all cases the employer has at least 1 year's advance notice of the need to make the first contribution.

Thus, clause (2) controls where otherwise an employer could have less than a year's advance notice of the liability. That is especially important where there is uncertainty as to whether a substantial cessation has occurred or regarding the alternative liability amount because the corporation's final determination might not even be made until after the due date for contributions for the year of the substantial cessation. Similarly, the substantial cessation could occur in a year when the employer is not subject to section 4062(e) liability pursuant to the corporation's enforcement policy, but in a later year, the employer becomes subject to section 4062(e) liability with respect to that earlier cessation. To prevent retroactive liability and other problems, clause (2) is controlling regarding the timing of the first contribution in all cases where the employer would otherwise have less than a year's advance notice of the liability. Where clause (2) is controlling, the seven annual payments would start with the first one required by clause (2).

In some cases, an employer may have notified the corporation of a substantial cessation and elected the alternative liability method in a specific amount. We intend for the same timing rules to apply in determining the due date of the first payment of such amount. However, the corporation may later challenge the amount of the alternative liability and seek a higher amount. In such cases, the higher amount would become due pursuant to the timing rules so that there may be separate 7-year periods, one for the originally elected amount and one for the higher amount determined by the corporation.

Fourth, if an employer fails to pay the amount due for any year by the due date, the employer will be liable for the balance of all amounts due for subsequent years under the alternative liability method, though the corporation may waive or settle such accelerated liability in its discretion. Of course, any such acceleration should be stayed during the pendency of any administrative or judicial proceeding to determine whether there has been a substantial cessation and/or the amount of the alternative liability amount. In addition, if the corporation or a court finds that the employer had a reasonable basis to contest any material portion of the corporation's determination, then the acceleration provision shall not apply, but the employer would owe past due payments plus interest.

S. 2511 is a commonsense solution to the concerns of the pension community, and I appreciate the work of Senator ALEXANDER, the members of the HELP Committee and the Obama administration in getting this important legislation across the finish line.

BURNS AND BARAN NOMINATIONS

Mr. SESSIONS. Mr. President, yesterday I cast votes against the nominations of Stephen Burns and Jeffrey Baran to be Commissioners on the Nuclear Regulatory Commission. I hope I am wrong in my conclusion. The NRC is an incredibly important body at this time in the history of civilian nuclear generation. While low natural gas prices puts economic strain on our fleet of nuclear generators, the NRC has to carefully evaluate the costs and benefits that its regulations provide. In the past the NRC has had talented scientists and nuclear experts compose the Commission. But for these two vacancies the President has nominated lawyers with legal and policy experience. Neither Stephen Burns nor Jeffrey Baran has the technical experience, I believe, that will enable them to effectively serve on the NRC.

Moreover, Stephen Burns—during his service with the NRC as General Counsel—authored several important legal memoranda that enabled then-NRC Chairman Gregory Jaczko to improperly undermine the licensing of Yucca Mountain resulting in severe criticism by a Federal court. He also provided a legal opinion that improperly advised Chairman Jaczko that he, alone, could use emergency powers to conduct the business of the Commission in the aftermath of the Fukushima disaster. This was not a close question, in my opinion. Mr. Burns should not have issued such an opinion. While Mr. Burns is familiar with the Commission's procedures, he has no technical nuclear power experience and I am not convinced that he will resist interpreting the law with a political bent. For Mr. Baran—a House Committee staffer who has worked for many years for an opponent of Yucca Mountain—there is not evidence that he can impartially consider highly political Commission decisions.

This critically important Commission must be led by persons who are able to be competent and independent persons of strength. Reluctantly, I have concluded that I must oppose the nominations.

COMMENDING DON EDWARDS

Mrs. BOXER. Today I ask my colleagues to join me in celebrating the 100th birthday and extraordinary contributions of former Congressman Don Edwards.

Don was born on January 6, 1915, in San Jose, CA, where he attended public schools and graduated from the San Jose High Academy. He then attended Stanford University, where he was a star on the golf team, winning a State medal for match play along with several amateur titles. After graduating in 1936, Don earned his LL.B. at Stanford Law School.

In 1940, Don was hired as a special agent by the Federal Bureau of Investigation. When World War II broke out, he was activated from the Navy Reserve and served for 4 years as a naval intelligence officer and gunnery officer in the South Pacific, attaining the rank of lieutenant.

In the 1950s, Don founded the Valley Title Company and built it into one of the Nation's leading title insurance companies. In 1962, he was elected to Congress.

During his 32 years in the House of Representatives, Don Edwards became known as ''the Congressman from the Constitution,'' the leading congressional defender of civil liberties and chairman of the Subcommittee on Civil and Constitutional Rights. I was lucky enough to serve with Don for 10 years and see firsthand his steadfast dedication to his home State of California and the civil rights and civil liberties of all Americans.

In the 1960s, he helped guide landmark civil rights and voting rights legislation through Congress. In the 1970s, he led the efforts to pass the Equal Rights Amendment. A master consensus-builder, he helped forge large bipartisan majorities to pass the Voting Rights Act extension of 1982, Fair Housing Amendments of 1988, Americans with Disabilities Act of 1990, and Civil Rights Act of 1991.

One of Don's proudest achievements was the creation of the Nation's first urban national wildlife refuge on the southern end of San Francisco Bay. Established in 1974, it was renamed the ''Don Edwards San Francisco Bay National Wildlife Refuge'' in 1995.